IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 1611 OF 1992

1. Shri Ratansi Dayalal Shah,

2. Shri Jayanti Dayalal Shah,

Both residing at Krishna Apartment,
Opposite Joshiwada, 1st floor,
Charai, District Thane. .... PETITIONERS

....Versus....

1. Thane Cycle Rikshaw, Scooter Service and repairing, through its sole Manager – Shri Shivshankar Guruprasad Mishra, Hindu, adult, Occ. Business, residing at Krishna Sudama Niwas, Shivaji Path, Thane.

2. Matasevak R. Mishra, residing at Krishna Sudama Niwas, Shivaji Path, near Railway Station, Thane.

3. Anjanikumar R. Mishra, (Expired and Writ petition dismissed as against respondent No.3 vide Court's order dated 16-11-2005). ..... RESPONDENTS.

Mr. N.V. Walawalkar, Senior Advocate for petitioners.

None for respondents though served.

CORAM : R.V. MORE, J.

DATED : JULY 6, 2007.

JUDGMENT.

1. By this petition under Article 227 of the Constitution of India, the petitioners challenge the legality, validity and propriety of the order dated 21.3.1992 passed by the learned Joint Civil Judge, Junior Division, Thane below application Exhs. 15 & 27 in Regular Civil Suit No. 732/91 under which the application filed by the respondent nos. 2 & 3 for impleading them as party came to be allowed.

2. The brief facts giving rise to the present writ petition are as follows :-

The dispute is about C.T.S. No. 33, Tika No.24, admeasuring 523.42 sq. meters or thereabout situated at Thane (hereinafter called as “the suit property”). This property came to be purchased by the petitioners from original owner by name Smt. Pushpaben Pande and others. It is the case of the petitioners that the respondent no.1 had been in unlawful possession of the said property without any legal status and is running the business under the name and style of “Thane Cycle, Rikshaw, Scooters Servicing and Repairing".

3. The petitioners entered into agreement with respondent no.1 on 11.12.1986, whereby the first respondent admitted that his possession in

the said property is without any legal status though he is running business since the year 1983. It was further agreed that the respondent no.1 will hand over vacant and peaceful possession of the said suit land to petitioners within one month from the date of the sanction of the building plans by the Thane Municipal Corporation which the petitioners were to submit to the Corporation. The respondent no.1 on the same day affirmed an affidavit in support of the said agreement.

The respondent no.1 had earlier filed Regular Civil Suit No. 862/83 against predecessor-in-title of the petitioners, in the Court of Civil Judge, Junior Division at Thane for certain reliefs which came to be withdrawn by filing compromise pursis at Exh.28 in that suit. Thus, according to the petitioners, the respondent no.1 started acting upon the said agreement and confirmed the same.

4. From August, 1991 respondent no.1 started allowing some third party persons to enter into said property for the purpose of doing hawking business and some of those persons tried to put up stalls and cabins on the said property and, therefore, the petitioners were constrained to file aforesaid Regular Civil Suit No. 732/91 against the first respondent for declaration that agreement dated 11.12.1986 is binding on him and that he had no right, title and interest in the said property. Injunction was also

claimed to restrain respondent no.1 from alienating or transferring the possession of the said property or from creating any third party rights in the said land. The petitioners also prayed for appointment of Court Receiver.

5. This suit was contested by the respondents mainly on the ground that there is no cause of action for filing the suit. He denied that from August, 1991 he allowed some third parties to do some hawking business and they were trying to put certain stalls and cabins on the said property. Respondent no.1 claims that he is in absolute possession of the said property and personally looking after the business which is being carried out on the said property. He submitted that members of his family are helping him out in carrying the said business in the suit property. No objection to appointment of Court Receiver was given by the respondent no.1 without disturbing his possession as per the terms and conditions of the agreement between him and petitioner dated 11.12.1986.

6. The second respondent filed an application on 3.10.1991 at Exh.15 in abovesaid suit as well as third respondent filed application on 10.12.1991 at Exh.27 for impleading them as party defendants in the said suit. The respondent nos. 2 & 3 in their respective applications contended that the said property and the business thereon is the property belonging to

the joint Hindu family of the respondent nos. 1, 2 & 3. Therefore, they are interested in the outcome of the suit and, therefore, in the interest of justice, they deserve to be impleaded as party defendants nos. 2 & 3.

7. This application came to be opposed by the petitioners on the ground that respondent nos. 2 & 3 have no locus. It was contended that the respondent no.1 admitted by executing the agreement that he is exclusively in possession of the said property and running business thereon. It was also contended that the respondent no.1 admitted petitioners' ownership to this property and further admitted that his possession to the suit property is without any legal status.

8. The learned trial Judge by his order dated 21.3.1992 was pleased to allow the application at Exhs. 15 & 27 which order is being impugned in the present Writ Petition. The Writ Petition was admitted on 10.4.1992 and interim relief in terms of prayer clause (c) was granted and thereby the further proceedings of Regular Civil Suit No.732/91 were stayed.

9. Having heard the learned Senior Counsel Shri N.V. Walawalkar for the petitioners and having gone through the agreement dated

11.12.1986 along with the alleged family arrangement between respondents dated 3.3.1990, I am of the considered view that the respondent nos. 2 & 3 are neither necessary nor proper parties and, therefore, the impugned order deserves to be interfered with in my jurisdiction under Article 227 of the Constitution of India.

10. The agreement between petitioners and respondent no.1 which was executed on 11.12.1986 categorically shows that the first respondent admitted the ownership of the petitioners. He also admitted that his possession since 1983 on the suit property is without any legal status. He further submitted that he is running business on the said property under the name and style of Thane Cycle, Rickshaw, Scooter Serving & Repairing Stand. By this agreement, the first respondent specifically agreed to hand over vacant and peaceful possession of the said property within one month from the date of the sanction of the building plan by Thane Municipal Corporation and in lieu of this, the respondent no.1 was to get alternative premises in a new building intended to be constructed on the said property. This agreement is silent about the alleged rights of the respondent nos. 2 & 3. The respondent nos. 2 & 3 in order to show their interest in the suit property relied upon the family arrangement dated 3.3.1990 between the respondent nos. 1, 2 & 3. In this family

arrangement, respondent nos. 2 & 3 specifically admitted that the respondent no.1 is mainly conducting the Thane Cycle, Rickshaw and Scooter Service and Repairing business. It was also admitted that there is a settlement in respect of suit property between the petitioners and first respondent and the said settlement/agreement is absolutely made in the interest and for the members of Mishra family. It was also alleged that the respondent no.1 is looking after the business as a Manager of the Hindu joint family. Conjoint reading of settlement, agreement and family arrangement will show that respondent nos. 2 & 3 have admitted about the execution of the agreement between petitioner and respondent no.1 on 11.12.1986. They have also admitted that this agreement is absolutely in the interest of Mishra family. The agreement as stated above does not mention any right of respondent nos. 2 & 3 and specifically shows that even possession of the respondent no.1 is unauthorised. In these facts and circumstances, I am of the considered view that the respondent nos. 2 & 3 are neither necessary nor proper parties to the proceedings in the suit.

11. The petitioners and respondent no.1 have filed joint Pursis in aforesaid suit and mutually agreed to appoint Court Receiver for the suit property. By this Pursis also, the respondent no.1 admitted that he is in possession and one Mr. Mishra Advocate of Thane was agreed to be

appointed as a Court Receiver with effect from 15.11.1991. By this joint Pursis, respondent no.1 agreed that property shall be handed over to the plaintiff within one month after the plan is sanctioned by the Municipal Corporation, Thane. The Pursis goes to show that the respondent nos. 2 & 3 are not necessary nor proper parties and not required to be impleaded as party defendants.

12. Assuming that the respondent nos. 2 & 3 are the members of the joint family and assuming for the sake of argument that the business carried out by the respondent no.1 on the suit property was joint property, the possession of the respondent no.1 in the suit property being unauthorised and illegal, the respondent nos. 2 & 3 at the most could have claimed share in the assets of the said business. In any case, they cannot claim any right to the said property. At the most, they can claim interest in the business run by the respondent no.1. The respondent nos. 2 & 3 have already admitted the agreement between the petitioners and respondent no.1 in which it is specifically made clear that possession of respondent no.1 is unauthorised. In view of these circumstances also, I am of the opinion that the respondent nos. 2 & 3 are neither necessary nor proper party.

13. The impugned order, therefore, deserves to be interfered with in my jurisdiction under Article 227 of the Constitution of India by passing the following order :-

The Writ Petition is allowed. The impugned order dated 21.3.1992 passed below Exhs. 15 & 27 is quashed and set aside. Rule is made absolute accordingly in terms of prayer clause (b) with no order as to costs. Needless to mention that interim stay stands vacated.

The learned trial Judge is directed to hear and dispose of the suit as expeditiously as possible.

JUDGE.

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